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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,678	07/15/2003	Christopher A. Smith	343.7121USV	7064

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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05/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,678

Applicant(s)

SMITH ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/10/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose an "adjustable width" slot.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 20 recites "an orifice between the said chute and said rotatable disc", as well as "said orifice having a shape that decreases in said direction of rotation of said rotatable disc". Claims 21 and 23 also recite the shape of the orifice. However, it is not clear how the orifice can have a shape if it not part of the chute, as required by claim 20, and it is merely a space or gap.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 20-21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallace et al [Pat. No. 4,706,556].

Wallace et al teach a device comprising a rotatable disc with a radial slot and knife blade (Figure 3, #110, 112, 114), a chute at an acute angle to the disc (Figure 7, #116), an orifice between the chute and disc (Figure 7), the chute extending in the direction of rotation (Figure 7), the orifice being an ovate shape of decreasing width in the direction of rotation (Figures 3 & 7) as it is a cylinder cut at an angle to produce an oval shape, the radial slot being capable of varying widths by adjusting the blade (Figure 7, #112, 114), and a chute housing (Figure 7, #116).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. Claims 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al as applied above, in view of Hughes et al [Pat. No. 3,280,723].

Wallace et al teach the above mentioned components. Wallace et al do not recite an elbow and adjustable blade. Hughes et al teach a slicing device comprising a chute with an elbow (Figure 9) and an adjustable blade (Figure 11). It would have been obvious to one of ordinary skill in the art to incorporate the elbow and adjustable blade of Hughes et al into the invention of Wallace et al since both are directed to potato slicers, since Wallace et al already included a chute and blade (Figure 7, #114 & 116), since the elbow of Hughes et al provided a more compact feeding chute with a higher capacity, and since the adjustable blade of Hughes et al provided greater flexibility for the size of the cut.

10. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al as applied above, in view of DE 19548209C1.

Wallace et al teach the above mentioned components. Wallace et al do not recite a teardrop shape for the orifice. DE 19548209C1 teaches a device comprising an teardrop shaped orifice (Figure 1). It would have been obvious to one of ordinary skill in the art to incorporate the teardrop shape of DE 19548209C1 into the invention of Wallace et al since both are directed to potato slicers, since Wallace et al already included an ovate orifice, and since teardrop-shaped orifices were commonly used in potato slicers as shown by DE 19548209C1.

Response to Arguments

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11. Applicant's arguments filed 4/10/07 have been fully considered but they are not persuasive.

Applicant argues that Wallace et al does not provide a chute which extends in the direction of rotation and an orifice of ovate shape which decreases in width in the direction of rotation. However, Wallace et al clearly teach these concepts as shown in Figures 3 and 7 as it is a cylinder cut at an angle to produce an oval shape. In Figure 3 Wallace et al illustrate a chute (#116) and a rotating disc (#110). The disc rotates in a circular motion, therefore the direction of rotation is any direction within the plane of the disc. Clearly, the chute is angled with respect to the rotating disc. Further, the cylindrical chute meets the plane of the rotating disc at an acute angle as shown in Figures 3 and 7. Therefore, the shape of the chute at its exit would be an oval which decreases in width at its ends. As discussed above, the direction of rotation is any direction in the planer of the rotating disc.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a chute without a continuous diameter or shape) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).


Applicant argues that Hughes et al do not teach an elbow. However, an elbow is merely a turn in the chute. Hughes et al clearly show an elbow (Figure 9).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER
5-16-07